

§ 1943.2

7 CFR Ch. XVIII (1–1–05 Edition)

§ 1943.2 Objectives.

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family-sized farms or to continue such operations when credit is not available elsewhere. Agency or its successor agency under Public Law 103–354 assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

[53 FR 35692, Sept. 15, 1988, as amended at 61 FR 35925, July 9, 1996]

§ 1943.3 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter. Such assistance consists of farm, home and non-farm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.4 Definitions.

As used in this subpart, the following definitions apply:

Additional security. Any security beyond that which is required to adequately secure the loan.

Agency. The Farm Service Agency, its country and State committees and their personnel, and any successor agency.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA or its successor agency under Public Law 103–354 office.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for FO loan assistance in accordance with § 1943.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103–354 regulations.

(e) Except for OL loan purposes, does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the

applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103-354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103-354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103-354 debt.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Family farm. A farm which:

(a) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm enterprise provided by:

(1) The borrower and any family member for a loan made to an individual.

(2) The members responsible for operating the farm, along with the families of these individuals, for a loan made to an entity.

(e) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments of all debts.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or a combination of individuals owning

more than a 50 percent interest in a cooperative, corporation, joint operation or partnership.

Market value. The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term *mortgage* also refers to any security interest in chattel property.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operations and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Participated in the business operations of a farm or ranch. An applicant has participated in the business operations of a farm or ranch if the applicant has:

(1) Been the owner, manager or operator of a farm business for the year's complete production and marketing cycle as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production and marketing cycle; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and the entity must be authorized to own both real and personal property and to incur debts in its own name.

Primary security. Any real estate and chattel security which is required to adequately secure the loan. This is not to be confused with *basic security*, as defined in § 1962.4 of subpart A of part 1962 of this chapter.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

Socially disadvantaged applicant (SDA). An applicant who is a member of a socially disadvantaged group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as a member of a group, without regard to their individual qualities. For entity SDA applicants, the majority interest in the entity must be held by socially disadvantaged individuals. The Agency has identified socially disadvantaged groups as Women, Blacks, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

State Beginning Farmer program. Any program that is carried out by or under contract with a State and designed to assist persons in obtaining the financial assistance necessary to establish and/or maintain viable farming or ranching operations.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Undivided right. An undivided right of title, or a title to an undivided portion of an estate, that is owned by one of two or more tenants in common or joint tenants before division.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 19524, May 7, 1992; 58 FR 26681, May 5, 1993; 58 FR 48287, Sept. 15, 1993; 58 FR 58648, Nov. 3, 1993; 61 FR 35925, July 9, 1996; 62 FR 9355, Mar. 3, 1997; 62 FR 28619, May 27, 1997; 68 FR 7698, Feb. 18, 2003; 68 FR 62224, Nov. 3, 2003; 69 FR 5263, Feb. 4, 2004]

§ 1943.5 [Reserved]

§ 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or a subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103-354 guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA or its successor agency under Public Law 103-354.

(c) Property and interests in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals, will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement farm ownership loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

[53 FR 35692, Sept. 15, 1988, as amended at 68 FR 7698, Feb. 18, 2003]

§ 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the